

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SECOND APPEAL No 64 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Order ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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HASMUKHLAL M SHAH  
VERSUS  
OIL & NATURAL GAS COMMISSION

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Appearance:  
MR BP TANNA for Appellant

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Order: 18/11/98

C.A.V. ORDER

1. The appellant, an employee (since retired) of Oil and Natural Gas Commission, Ankleshwar, Bharuch, filed this second appeal under section 100 of C.P.C.

before this Court against the judgment and decree of Assistant Judge, Bhavnagar dated 22-3-1998 under which the judgment and decree in Regular Civil Suit No.176/92 of Civil Judge, (J.D.), Ankleshwar decided on 30-8-1996 has been confirmed. Under the judgment and decree dated 30-8-1996, the Civil Judge (J.D.), Ankleshwar dismissed the suit of the plaintiff-appellant for declaration that his retirement made on 31-12-1991 by the respondent was due to respondent taking his wrong date of birth i.e. 8-12-1933. His correct date of birth is 15-12-1935. Learned first appellate court, as stated earlier, has dismissed the appeal. Hence, this second appeal.

2. Only contention raised by the learned counsel for the appellant is that the learned first appellate court fell in error in rejecting the claim of the plaintiff-appellant on the ground that he has failed to produce the birth date certificates of his brothers. Carrying this contention further, learned counsel for the appellant urged that this is absolutely a perverse approach taken by the first appellate court as the birth certificates of the birth of other brothers of the plaintiff-appellant are irrelevant to the case of his correction of date of birth. In support of his contention, learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of Brij Mohan vs. Priya Brat reported in AIR 1965 SC 282.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the appellant.

4. The facts which are not in dispute in the case are to be briefly stated. The plaintiff-appellant had joined O.N.G.C. on 2-4-1962 as truck driver. At the time of initial appointment in the service of O.N.G.C. he gave his date of birth as 8-12-1933. He had then filled in attestation forms for Character and Antecedents Verification on 22-8-1963 in which he has also declared his date of birth as 8-12-1933. These attestation forms were duly certified by the Taluka Development Officer, Ankleshwar on 22-8-1963. In his S.S.C. certificate his date of birth is shown as 8-12-1933. His date of birth in the S.S.C. certificate has been entered on the basis of what it is declared by the father of the plaintiff-appellant on 12-6-1942. The plaintiff-appellant has not disputed the fact that in his representations submitted to O.N.G.C. for correction of date of birth as well as in the two special civil applications filed before this Court

earlier to filing of the civil suit it was not his case that this declaration was not signed by his father. So the declaration which has been made by his father at the time of getting him admitted in the school, regarding date of his birth is an undisputed fact. He prayed for change of his date of birth on the basis of the birth certificate of Umreth Nagar Palika which he obtained on 23-6-1975 in which what he stated that his date of birth is 15-12-1935. At the time of filing of C.P.F. nomination as well as option for O.N.G.C. pension scheme, he has declared his date of birth as 8-12-1933.

5. The plaintiff-appellant stated that his father had eight children and it is not in dispute that seven out of these are alive. He has not produced the birth certificate of any of his brothers. In his alleged birth date certificate taken from Nagar Palika, Umreth it is clearly mentioned that vaccination was done on 2-2-1936 and this entry appears to have been made after vaccination. He remained silent for a period of 19 years during the service period on this point. From the date he was admitted in the school till he passed S.S.C. examination and after entering in service till 19 years he has not raised any voice that his recorded date of birth in service record is incorrect or that his date of birth recorded in the school record is incorrect. He has not prayed for the correction of his recorded date of birth in the school record as well as S.S.C. certificate and secondly he is not challenging the date of birth recorded in S.S.C. certificate.

6. From the reading of judgment of first appellate Court, I find that it is not correct to contend on the part of the learned counsel for the appellant that the claim of the plaintiff-appellant for correction of recorded date of birth in service record has been rejected only on the ground that the plaintiff has not produced the birth date certificates of his brothers and sisters. From the Judgment, I find that the learned first appellate court has in the context of the very relevant fact observed that the plaintiff has not produced the birth date certificates of his brothers and sisters and if the same would have been produced then a clear idea would have come out about the true birth date of the plaintiff-appellant. The plaintiff is claiming the correction in his recorded date of birth in the service record which has been entered on the basis of his own declaration and certificate produced at the time of appointment on the basis of birth date certificate obtained from the Nagar Palika, Umreth and the prayer has been made after about 19 years of his entry in the

service and he is challenging the date of birth which is recorded on the basis of declaration made by his own father in his S.S.C. certificate. The first appellate court has not acted arbitrary in observing that the birth date certificates of his brothers and sisters would have thrown light on the issue. Once the date of birth has been recorded in the service record of an employee, and more so on the basis of his own declaration which is based on school certificate and that has been attested and followed by subsequent declarations from time to time, ordinarily should not have been changed merely on asking by the concerned employee. Moreover, when such a prayer has been made after considerable long period of service.

7. There is yet another aspect of the matter. It is not the case where some wrong date of birth has been entered in the service record of the plaintiff-appellant. What the plaintiff-appellant stated that his recorded date of birth in his school certificate is incorrect. That entry has been made way back in the year 1942. In the service record of the plaintiff-appellant his date of birth has been recorded on the basis of his own declaration. So in substance, the appellant is challenging the correctness of his own certificate on the basis of which he got the appointment as well as his date of birth recorded in the service record. Now this settled and accepted position is sought to be challenged by none other than the plaintiff-appellant himself on the basis of the certificate obtained by him from Umreth Nagar Palika. Learned first appellate court has given many other reasons for not accepting the claim of the plaintiff-appellant. Delay has been considered as one of the important fact against him and secondly, on the basis of the facts which have come on record, the entry of his date of birth as there in the birth date certificate of Umreth Nagar Palika was not believed.

8. In the case of Commissioner of Police vs. Bhagwan V. Lahane reported in 1997 (1) SCC 247 while dealing with the case where the respondent therein sought to correct the date of birth recorded in his service record on the basis of his school leaving certificate relying on extract from the birth register, their Lordships of the Hon'ble Supreme Court held that the condition precedent for the employee seeking correction in his recorded date of birth is to show that the recorded date of birth in his school leaving certificate was due to negligence of some other person or that the same was an obvious clerical error. Their

Lordships of the Hon'ble Supreme Court further held that where an employee fails to do so, relief as prayed for cannot be granted.

9. Exactly what here the plaintiff-appellant has prayed for. In the S.S.C. certificate his date of birth is shown as 8-12-1933 and that has been entered, as stated earlier, on the basis of declaration of his own father. It is not the case of the plaintiff-appellant before the trial court that his date of birth in the school record was made due to negligence of some other person or it is as a result of clerical error. After obtaining the certificate, more than 19 years of his entry in service he has gone for correction of his date of birth but on this abstract document which in the circumstances come on record i.e. non-production of birth certificate of his brothers and sisters, rightly been not taken to be a conclusive evidence of his date of birth. In this context, non-production of birth certificates of his brothers and sisters assume importance and relevance and an adverse inference could have been drawn and should have been drawn against the plaintiff-appellant. Much emphasis has been laid on this certificate but an important aspect has altogether been ignored that in the Umreth Nagar Palika certificate the name of child has been mentioned. The refusal to correct the date of birth in service on the basis of this extract and more so in the absence of material to show that the entry in the S.S.C. certificate was incorrect and further the extract from the birth register even otherwise surrounded by suspicious circumstances is perfectly correct, legal and justified action on the part of the respondent as well as the courts have also not committed any error in declining to grant the decree as prayed for by the plaintiff-appellant. The extract from birth register produced by the plaintiff-appellant along with his representation in the Court thereafter is inconsistent with the school leaving certificate produced by him at the time of his entry in the service and wherein admittedly his date of birth has been recorded on the basis of what it has been declared to be by his own father and in the presence of these facts, the respondent has not committed any illegality in declining to correct the recorded date of birth of the plaintiff-appellant.

20. Their Lordships of the Hon'ble Supreme Court in the case of Commissioner of Police vs. Bhagwan V. Lahane (supra) observed that ordinarily, a child is not given a name before birth and in the entry in the birth

register only sex viz., male or female would be mentioned. After naming ceremony, the name is given. Their Lordships of the Hon'ble Supreme Court further observed that it is highly doubtful if the parents of the employee who were villagers and illiterate had named the appellant either before or on the day of his birth. Exactly in this case also, the name has been mentioned of the plaintiff-appellant in the date of birth register. Be that as it may.

11. As the plaintiff-appellant has not produced the birth certificates of his brothers and sisters, a suspicion is created in the mind of the Court on the extract produced by the plaintiff-appellant. The cumulative effect of all the facts and circumstances is that the learned both the courts below have not committed any error nor any question of law much less a substantial question of law does arise in the second appeal, which calls for interference of this Court. Each case has to be decided on the basis of its own facts as well as the law as developed on the subject of correction of recorded date of birth entered in the service record. The decision on which reliance has been placed by the learned counsel for the appellant is of little help to him in this case.

12. In the result, this second appeal fails and the same is dismissed.

(S.K.Keshote,J)

zgs/-